

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ZUAVEY KADAFI,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-684-SLR
)	
LAWRENCE M. SULLIVAN, JOHN)	
EDINGER, and BRENDAN O'NEILL,)	
)	
Defendants.)	

MEMORANDUM ORDER

At Wilmington this 22nd day of March, 2007, having screened the case pursuant to 28 U.S.C. § 1915 and § 1915A;

IT IS ORDERED that the complaint is dismissed without prejudice for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915 and § 1915A, for the reasons that follow:

1. **Background.** Plaintiff Zuavey Kadafi, an inmate at the Howard R. Young Correctional Institution ("HRYCI"), filed this civil rights action pursuant to 42 U.S.C. § 1983. He appears pro se and has been granted leave to proceed in forma pauperis.

2. **Standard of Review.** When a litigant proceeds in forma pauperis, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. When a prisoner seeks redress from a government defendant in a civil action, 28 U.S.C. § 1915A provides for screening of the complaint by the court. Both 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) provide that the court may dismiss a complaint, at any time, if the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks

monetary relief from a defendant immune from such relief. An action is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

3. The court must "accept as true factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996)(citing Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993)). Additionally, pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim when "it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Haines v. Kerner, 404 U.S. 519, 520-521 (1972)(quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

4. **Discussion.** Plaintiff filed this action against Delaware Public Defender Lawrence Sullivan ("Sullivan") and assistant public defenders John Edinger ("Edinger") and Brenden O'Neill ("O'Neill"). Plaintiff has numerous complaints, but basically alleges that Edinger did not provide him with effective assistance of counsel during criminal proceedings. Plaintiff alleges that Sullivan and O'Neill, in their supervisory positions, neither responded to his complaints about Edinger, nor offered a resolution.

5. The three defendants are attorneys in the Delaware Public Defender's office. As alleged by plaintiff, he was a defendant in a criminal action and represented by Edinger. When bringing a § 1983 claim, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Moore v. Tartler, 986

F.2d 682, 685 (3d Cir.1993).

6. Public defenders do not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in criminal proceedings. Polk County v. Dodson, 454 U.S. 312 (1981); Harmon v. Delaware Secretary of State, 154 Fed. Appx. 283, 284-85 (3d Cir. 2005). Because public defenders are not considered state actors, plaintiff's claim fails under § 1983.

7. **Conclusion.** Based upon the foregoing analysis, the complaint is dismissed without prejudice for failure to state a claim and as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Amendment of the complaint would be futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 111 (3d Cir. 2002); Borelli v. City of Reading, 532 F.2d 950, 951-52 (3d Cir. 1976). Plaintiff's motion to amend complaint (D.I. 11) is denied as moot.

Plaintiff is not required to pay any previously assessed fees or the \$350.00 filing fee. The clerk of the court is directed to send a copy of this order to the appropriate prison business office.


UNITED STATES DISTRICT JUDGE